

**REMARKS/ARGUMENT**

Drawing Figure 2 has been amended to properly identify comparator #16 as #24. Accordingly, the drawing objection is overcome.

Claim 10 has been amended to change its dependency from Claim 10 to Claim 8. Accordingly, the objection to Claim 10 is overcome.

1) Claim 1-32 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 6,424,280 in view of Evans et al. (US 6,476,745). Applicants respectfully traverse this rejection as set forth below.

In rejecting Claims 1-32, the Examiner has examined Claims 1-32 in view of the teaching of the specifications of U.S. 6,424,280 and Evans et al (U.S. 6,476,745) (Office Action, page 3, line 1 – page 6, line 22). Applicants respectfully submit that the Examiner has not established a prima facie case of obviousness-type double patenting for Claims 1-32. In order to establish a prima facie case of obviousness-type double patenting, **the Examiner must establish that the claims of the present application are obvious over the CLAIMS of the cited patent** – NOT the teaching of the patent’s specification, as determined by the Examiner. Applicants direct the Examiner’s attention to MPEP § 804(B)(1):

In determining whether a nonstatutory basis exists for a double patenting rejection, the first question to be asked is – **does any claim in the application define an invention that is merely an obvious variation of an invention claimed in the patent?** If the answer is yes, then an “obvious-type” nonstatutory double patent rejection may be appropriate.

**(A) Determine the scope and content of a patent claim and the prior art relative to a claim in the application at issue;**

**(B) Determine the differences between the scope and content of the patent claim and the prior art as determined in (A) and the claim in the application at issue;**

- (C) Determine the level of ordinary skill in the pertinent art; and**
- (D) Evaluate any objective indicia of nonobviousness.**

The conclusion of obvious-type double patenting is made in light of these factual determinations.

Any obvious-type double patent rejection should make clear:

**(A) The differences between the inventions defined by the conflicting claims - a claim in the patent compared to a claim in the application; and**

**(B) The reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent.**

When considering whether the invention defined in a claim of an application is an obvious variation of the invention defined in the claim of a patent, **the disclosure of the patent may not be used as prior art**. This does not mean that one is precluded from all use of the patent disclosure.

In lieu of the above, it is clear that the Examiner has not set forth a prima facie case that Claims 1-32 of the present application are obvious over the claims of U.S. Patent No. 6,424,280 in view of the claims of Evans et al. (US 6,476,745).

2) Claims 33 and 34 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 6,424,280 in view of Evans et al. (US 6,476,745) and in further view of Sadkowski et al (US 6,229,470). Applicants respectfully traverse this rejection as set forth below.

In rejecting Claims 33 and 34, the Examiner has examined Claims 33 and 34 in view of the teaching of the specifications of U.S. Patent No. 6,424,280 in view of the specification of Evans et al. (US 6,476,745) and in further view of the specification of Sadkowski et al (US 6,229,470). Applicants respectfully submit that the Examiner has not established a prima facie case of obviousness-type double patenting for Claims 33 and 34.

In order to establish a *prima facie* case of obviousness-type double patenting, **the Examiner must establish that the claims of the present application are obvious over the CLAIMS of the cited patent** – NOT the teaching of the patent’s specification, as determined by the Examiner. Applicants direct the Examiner’s attention to MPEP § 804(B)(1):

In determining whether a nonstatutory basis exists for a double patenting rejection, the first question to be asked is – **does any claim in the application define an invention that is merely an obvious variation of an invention claimed in the patent?** If the answer is yes, then an “obvious-type” nonstatutory double patent rejection may be appropriate.

- (A) Determine the scope and content of a patent claim and the prior art relative to a claim in the application at issue;**
- (B) Determine the differences between the scope and content of the patent claim and the prior art as determined in (A) and the claim in the application at issue;**
- (C) Determine the level of ordinary skill in the pertinent art; and**
- (D) Evaluate any objective indicia of nonobviousness.**

The conclusion of obvious-type double patenting is made in light of these factual determinations.

Any obvious-type double patent rejection should make clear:

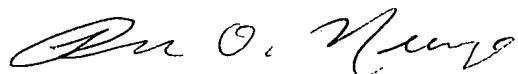
- (A) The differences between the inventions defined by the conflicting claims - a claim in the patent compared to a claim in the application; and**
- (B) The reasons why a person of ordinary skill in the art would conclude that the invention **defined in the claim in issue is an obvious variation of the invention defined in a claim in the patent**.**

When considering whether the invention defined in a claim of an application is an obvious variation of the invention defined in the claim of a patent, **the disclosure of the patent may not be used as prior art**. This does not mean that one is precluded from all use of the patent disclosure.

In lieu of the above, it is clear that the Examiner has not set forth a prima facie case that Claims 33 and 34 of the present application are obvious over the claims of U.S. Patent No. 6,424,280 in view of the claims of Evans et al. (US 6,476,745) and in further view of the claims of Sadkowski et al (US 6,229,470).

Claims 1-34 stand allowable over the references of record. Applicants respectfully request allowance of the application as the earliest possible date.

Respectfully submitted,



Ronald O. Neerings  
Reg. No. 34,227  
Attorney for Applicants

TEXAS INSTRUMENTS INCORPORATED  
P.O. BOX 655474, M/S 3999  
Dallas, Texas 75265  
Phone: 972/917-5299  
Fax: 972/917-4418

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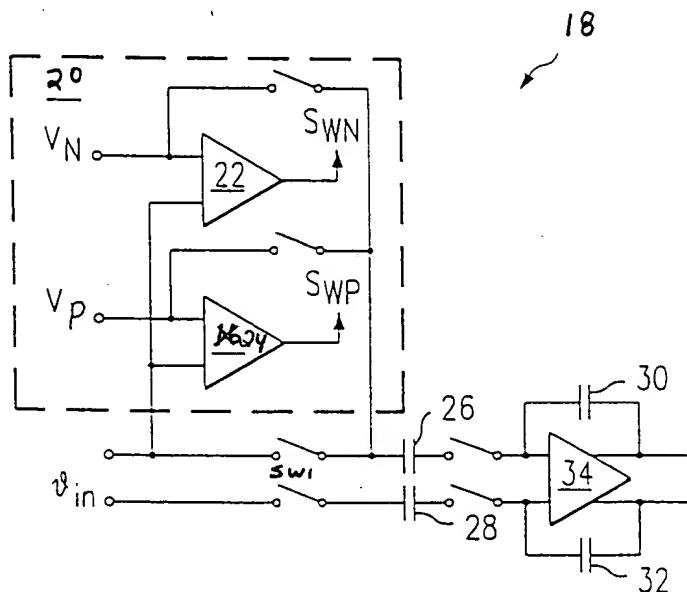
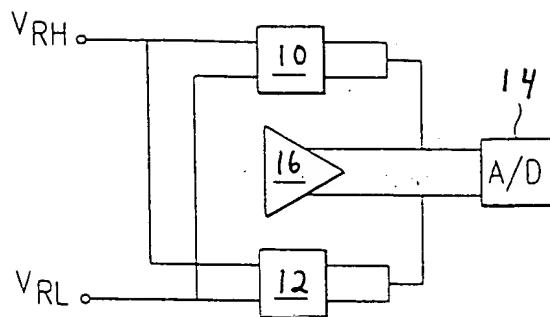


FIG. 2

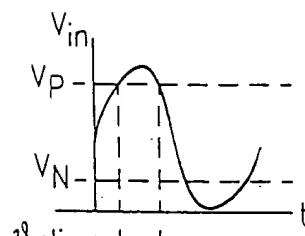


FIG. 3a

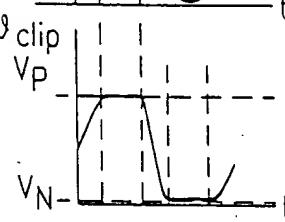


FIG. 3b